IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.863 OF 1994

Laxmibai Vaman Upadhya & Ors. ... Applicants

Vs.

Shri Gajanan Mahadeo Vartak & Ors. ... Respondents

Mr. Rajiv L. Patil for the Applicants.

Mr. P.S. Dani for Respondent Nos.1A to 1E.

CORAM : A.M. KHANWILKAR, J.

DATED : 8TH JUNE, 2006.

P.C.:-

1. Heard counsel for the parties. Although this revision application pertains to the year 1994 and the office has treated this as final hearing matter, the order sheet do not show that this petition has already been admitted in the past. In that sense, the matter is still pending for admission. Be that as it may, the limited question that arises for consideration in this civil revision application is whether the lower appellate court was justified in entertaining the application preferred by the Respondents (Ex-32 and Ex-34) and allowing them by the impugned order and thereby permitting the Respondents to put their signatures below the plaint in respect of all the pleadings and also below the verification by effecting amendment in the

original plaint, if necessary. In my opinion, the lower appellate court is right in observing that this defect is a curable defect and can be cured. This view taken by the lower appellate court is unassailable.

2. Counsel for the Appellants, however, contend that inspite of this defect known to the Respondents, no steps have been taken by the Respondents to cure the defect before the trial court right from the beginning till the matter was argued and fixed for judgment. This fact has been noted by the trial court in para 28 of its judgment. On this basis, it is contended that whether such defect can be permitted to be cured, such question ought to have been considered only at the final hearing of the appeal and not on the application preferred by Respondents to permit them to carry out necessary amendments. I find no substance in this submission. As it is a procedural defect and is curable, the party is not precluded in taking out formal application before the main petition is decided. It is not necessary that such issue is to be decided only at the final hearing of the proceedings. There is no such fetter placed on the court. Suffice it to observe that the order is a discretionary order passed in favour of the Respondents. In any case, this is not a case for interference in exercise of revisional jurisdiction. Revision application is dismissed with no order as to costs. The appellate court is directed to proceed with the appeal expeditiously and in any case dispose off the same by the end of December, 2006. Parties through their counsel assure before this court that they will extend full cooperation for early disposal

of the appeal before the appellate court and will not seek adjournment on any count whatsoever.

(A.M. KHANWILKAR, J.)